

# EXHIBIT 4

**In Re:**

*Platinum Partners Value Arbitrage Fund, L.P. v.  
Michael Goldberg*

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*16-12925-scc & 18-01650-scc  
December 8, 2021*

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

PLATINUM PARTNERS VALUE ARBITRAGE                      Lead Case No.  
FUND L.P. AND PLATINUM PARTNERS                      16-12925-scc  
VALUE ABRITRAGE INTERMEDIATE FUND,  
Debtor.

- - - - -x

PLATNIMUM PARTNERS VALUE ARBITRAGE FUND L.P.,  
Plaintiff,                      Adv. Proc. No.  
v.                      18-01650-scc  
MICHAEL GOLDBERG,  
Defendant.

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

December 8, 2021  
11:00 AM

B E F O R E:  
HON. SHELLEY C. CHAPMAN  
U.S. BANKRUPTCY JUDGE

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2 Adversary Proceeding: 18-01650-scc Platinum Partners Value

3 Arbitrage Fund L.P. v. Goldberg

4 Doc. #38 Oral Argument on the Summary Judgement Motions

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A P P E A R A N C E S (All present by video or telephone):

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BY: MARK R. KOOK, ESQ.

1 P R O C E E D I N G S

2 THE COURT: Good morning, everyone. This is Judge  
3 Chapman. We're here this morning for a hearing on cross-  
4 motions for summary judgment in the Platinum Partners Value  
5 Arbitrage Fund v. Michael Goldberg adversary proceeding.  
6 Adversary proceeding number 18-01650.

7 This hearing is being conducted entirely  
8 telephonically via the CourtSolutions platform and a recording  
9 of the hearing will be made. No private recordings are  
10 permitted.

11 I do have a list of those of you who have registered  
12 to participate this morning. Please identify yourself for the  
13 record when you speak, and identify the party on whose behalf  
14 you are appearing.

15 I see on my dashboard that I have Mr. Burns from  
16 Holland & Knight. Are you there, sir?

17 MR. BURNS: Good morning, Your Honor.

18 THE COURT: Good morning.

19 And I have Mr. Kook on behalf of Dr. Goldberg.

20 MR. KOOK: Good morning, Your Honor.

21 THE COURT: Good morning. Okay, so first of all, I  
22 want to start by a bit of an apology. Your papers, at least  
23 the latter filings, had the misfortune of coming in right when  
24 the pandemic was rather disrupting life. And we had ceased  
25 physically going to the courtroom as of March 9th, 2020. And

1 then the remainder of the papers came in, I believe, in April  
2 and May. And frankly, no one was there to the extent that you  
3 had sent copies to chambers. And as you can imagine, we have a  
4 very large docket, and unless things are specifically brought  
5 to our attention we find it impossible to keep track of  
6 everything. So I'm glad that you ultimately reached out  
7 because this had simply gotten lost in the fog of COVID, and  
8 we're sorry about that. But obviously, once we were aware that  
9 it was still out there, we turned our attention to it and here  
10 we are today. So apologies for the delay.

11 Life has been anything but normal for the past twenty  
12 months, and looks like it's going to not be normal for a while  
13 yet. And thank you all to whoever it was that put together the  
14 binders that I've worked with.

15 So on that point, I have spent a lot of time with your  
16 submissions and I don't need to hear -- I'm sure you've  
17 prepared extensively for today. I really don't need to hear  
18 summaries or reiterations of what's in the pleadings, but I'm  
19 happy to give you each fifteen minutes to make whatever points  
20 you'd like to make to me, highlights, things you'd like to  
21 underscore, et cetera, and I will give you that time, frankly,  
22 uninterrupted so that you can make whatever presentation you'd  
23 like. So Mr. Burns, would you like to go first?

24 MR. BURNS: Absolutely, Your Honor, and thank you.

25 Robert Burns, on behalf of the foreign representatives

1 of Platinum Partners Value Arbitrage Fund LP in liquidation in  
2 the Cayman Islands. And I'll refer to that as PPVA throughout  
3 this presentation.

4 Your Honor, there's lots of noise in the summary  
5 judgment papers, as one would expect from a defendant on a  
6 summary judgment motion. But I'd like to spend the fifteen  
7 minutes that Your Honor has graciously allowed trying to cut  
8 through a little bit of that noise and focus on a few key  
9 undisputed facts.

10 The timeline is extremely instructive here. And  
11 frankly, we think it's all you need to know to decide this  
12 case.

13 I'll note at the outset that August 23rd, 2016 is the  
14 operative line in the sand here. That was the date on which  
15 the winding up petition for PPVA was filed in the Cayman court,  
16 and that was the date, according to our unrebutted submission  
17 on Cayman law, when PPVA's existing management lost the reins  
18 over PPVA's property, and all property of PPVA became subject  
19 to the jurisdiction of the Cayman court and the Cayman court's  
20 liquidators. So that's the date on which we're asking this  
21 Court to extend comity to the Cayman law and to the Cayman  
22 court.

23 After Goldberg left Platinum in November 2013, or  
24 December 2013, the -- we have two term sheets between Platinum  
25 Management and Goldberg. The first from 2014, the second from

1 2015. There's a lot that's been said about what's in and  
2 what's not in these terms sheets, but I think it's important to  
3 focus on some of the key language in those term sheets.

4           They say that Platinum -- in this case, Platinum  
5 Management, wishes, subject to the terms and conditions  
6 described herein, to cause certain of the investment funds that  
7 were under its management -- and that includes PPVA -- to  
8 transfer to Dr. Goldberg certain positions that were held by  
9 them as of December 31st, 2013. And there's no dispute here,  
10 Your Honor, that among those positions were certain Series B  
11 convertible preferred shares of Navidea that subsequently were  
12 converted into the warrants that are now at issue.

13           So what are the "terms and conditions" to which these  
14 transfers would be "subject"? For our purposes, there are two  
15 in particular. First, the notes.

16           This was never intended to be, nor is it on the face  
17 of these agreements, an outright transfer of the listed  
18 securities to Goldberg. The term sheets say that Goldberg,  
19 quote, shall issue seven-year notes -- and they're referred to  
20 as securities loan notes -- to the Platinum funds that would be  
21 transferring the securities to him. And those notes would be  
22 for the fair market value of those securities as of December  
23 2013, which for the securities we're fighting about here was  
24 eleven million dollars.

25           So Goldberg would give a note transferring to

1 Platinum -- to the transferring Platinum fund in this case,  
2 PPVA, an eleven-million-dollar note. He'd get the securities,  
3 in this case the warrants. And once he paid off the note, he'd  
4 get the securities free and clear. But until that happened,  
5 until he paid off the note, whatever Goldberg did with respect  
6 to those securities -- if he sold them, if he got dividends, et  
7 cetera, the benefits would flow to the noteholders to prepay  
8 the notes.

9 Which raises the second key condition here, the  
10 protections accorded to the Platinum entities until such time  
11 as Goldberg prepaid -- repaid the notes, and those protections  
12 were stated in the term sheets. They needed to be deposited  
13 into a segregated brokerage account which was to be subject to  
14 a securities account control agreement in favor of Platinum  
15 Management or its affiliates. And those terms of that  
16 securities control agreement needed to be reasonably acceptable  
17 to Platinum.

18 Why was that important? Well, it's because the  
19 Platinum entities that were transferring these securities were  
20 intended to have a first priority protected security interest  
21 in them. Many of these securities, including the securities --  
22 the warrants we're talking about here, were certificated  
23 securities. They were paper documents with wet ink signatures.  
24 And so for the Platinum entities to preserve and protect their  
25 security interest in these securities, they needed to be in

1 protections -- in accounts with suitable protections on them.

2 So to be very clear at the outset, Your Honor, the  
3 transfers under this term sheet were never intended, nor are  
4 they on the face of the agreement to be outright transfers to  
5 Goldberg. Goldberg would issue the note at the full value of  
6 these securities. He would hold them in a segregated account.  
7 And once he paid them off -- effectively, once he bought them  
8 at whatever price they were trading at the end of 2013, he  
9 would own them free and clear and he would get the upside.

10 August 2015, PPVA and Navidea enter into a Securities  
11 Exchange agreement that preferred stock becomes the warrants  
12 that are now at issue. Mr. Goldberg was a member of Navidea's  
13 board at the time. There are clear statements in the  
14 underlying documents that PPVA was the legal and beneficial  
15 owner of these preferred shares that were to become warrants.  
16 Goldberg never raised an objection to that. He argues  
17 variously that he thought it was a mistake or that he didn't  
18 think it was a big deal because he thought he was the rightful  
19 owner of the preferred shares. But the fact of the matter is,  
20 he was a director of Navidea at the time. He never raised an  
21 objection. He never said the warrants to be issued to him and  
22 not to PPVA.

23 So in August 2015, the warrants get issued. They're  
24 held in PPVA's name. They're issued in PPVA's name. They're  
25 deposited in PPVA's custodial vault. And they're they sit to

1 this day.

2 2016, the house of cards that is Platinum began to  
3 collapse and Goldberg starts seeing the writing on the wall and  
4 becomes newly concerned about his term sheets. But then  
5 nothing happens until the line in the sand that I referred to  
6 earlier on August 23rd, 2016 when the winding up petition is  
7 filed in the Caymans.

8 So what do we know about where things stood as of that  
9 moment in time? Well, the warrants remained in PPVA's  
10 custodial account and in PPVA's name. Goldberg had not yet  
11 created the segregated account with a securities account  
12 control agreement to Platinum's satisfaction. We know that  
13 because he and his bankers were continuing to negotiate the  
14 terms of such an agreement as late as late September 2016. And  
15 we know that we've never -- not on PPVA's side, not on  
16 Goldberg's side, not on anyone's side -- seen a single actual  
17 note issued by Goldberg to any Platinum entities.

18 So the undisputed factual record is that as of the  
19 moment in which the Cayman liquidation proceedings commenced,  
20 PPVA had not yet transferred possession of the warrants to  
21 Goldberg, and Goldberg hadn't yet satisfied at least some of  
22 the terms and conditions of the term sheet.

23 The months that followed, or the two months that  
24 followed, there were a flurry of activities by Goldberg post-  
25 liquidation to try to get any -- a deal -- any deal done.

1 We know that on October 11th, 2016, Goldberg had a  
2 conversation with David Steinberg of Platinum. Steinberg told  
3 Goldberg that in light of the Cayman liquidation, PPVA --

4 THE COURT: Having said I wasn't -- having said I  
5 wasn't going to interrupt you, I am now going -- I am now going  
6 to --

7 MR. BURNS: Okay. Yes, Your Honor.

8 THE COURT: -- interrupt you to ask a question.

9 MR. BURNS: Okay.

10 THE COURT: Because one of the -- one of the things  
11 that -- I'm trying to find the exact place. Give me a moment.

12 One of the things that Dr. Goldberg says about what  
13 you've been discussing is that -- and this is in his brief at  
14 page 14 -- that Platinum never came to him with actual stock to  
15 deliver until October 2016, at which time the account was in  
16 place.

17 He argues that he opened the brokerage account  
18 immediately upon Platinum finally coming to him with the  
19 Navidea securities in hand to physically deliver to him.

20 So that statement is completely at odds with basically  
21 everything that you've said, that nothing had occurred that  
22 established -- that satisfied the conditions, proceeded to put  
23 it in technical terms such that he was entitled to the  
24 securities.

25 So could you respond directly to the allegation or to

1 the statement that Dr. Goldberg makes that PPVA delivered stock  
2 to him in October, which is after the commencement of the  
3 winding up?

4 MR. BURNS: Well, Your Honor, I think the answer is  
5 PPVA at all times had possession of these warrants. They were  
6 issued in 2015 by Navidea following Navidea's conversion of the  
7 Series E preferred stock into warrants. They were issued in  
8 PPVA's name. They were sent in paper form to PPVA. We have a  
9 paper trail establishing that PPVA put those warrants into its  
10 custodial account, and there they sat -- and there they sit.

11 The fact of the matter is that --

12 THE COURT: But you haven't answered my question. Did  
13 Platinum, whoever that was, go to Dr. Goldberg in October and  
14 physically deliver Navidea's securities to him?

15 MR. BURNS: Oh, certainly not, Your Honor, and that's  
16 because as of that -- as of that time, prior to September of  
17 2016, there was no -- there was no control account. There was  
18 no segregated brokerage account with security protections  
19 acceptable to Platinum, and we know that because that didn't  
20 happen until the end of September.

21 THE COURT: But --

22 MR. BURNS: Go ahead, Your Honor.

23 THE COURT: So is it PPVA's position that said Dr.  
24 Goldberg -- that that's a -- charitably call it a misstatement?  
25 Is Goldberg -- is that not a truthful statement that Dr.

1 Goldberg is making, or is it?

2 MR. BURNS: Well, I don't want to accuse my adversary  
3 of being untrue.

4 THE COURT: I know. I understand.

5 MR. BURNS: But I --

6 THE COURT: It's a rather important point, because if  
7 that -- and this is where summary judgment is so tricky because  
8 obviously, as you know I can't resolve disputed issues of fact.  
9 And to the extent that that is a true statement that Dr.  
10 Goldberg is making in his papers, then that creates a counter-  
11 narrative to what you're saying.

12 MR. BURNS: What I can tell you, Your Honor, and I  
13 hope this answers your question to -- I can tell you that the  
14 unrebutted testimony of Platinum's former CFO, Mr. SanFilippo,  
15 who his testimony is various places throughout the papers, but  
16 he testified that -- he testified to a couple of salient points  
17 on this question.

18 One, the PPVA warrants were in physical form. They  
19 sat in PPVA's custodial accounts. They were always there for  
20 the asking.

21 But two, the reason why they had not transferred to  
22 Dr. Goldberg and the reason why they would not transfer to Dr.  
23 Goldberg is because Dr. Goldberg hadn't done what he promised  
24 to do as a condition precedent to receiving those warrants, and  
25 that is to, at a minimum, set up the segregated account with

1 controlled protections to protect PPVA's security interest in  
2 these securities.

3 So who knows what would have happened. I presume what  
4 would have happened had Goldberg actually done what he said he  
5 would do in the term sheets and they actually issued the notes  
6 and actually set up the controlled brokerage account, that  
7 Platinum would have, or PPVA would have turned the warrants  
8 over to him. But the fact of the matter is, he did not do so  
9 pre-liquidation. And that was the reason that was testified by  
10 Mr. SanFilippo, and I don't believe that's been rebutted here,  
11 that was the reason why those securities did not transfer to  
12 Goldberg prior to the commencement of the liquidation.

13 THE COURT: So let me just pause, because this is a  
14 very important point.

15 Mr. Kook?

16 MR. KOOK: Yes, Your Honor.

17 THE COURT: Can you tell me what's going on here?

18 MR. KOOK: What document are you looking at, Your  
19 Honor?

20 THE COURT: On that point, in your papers, you say Dr.  
21 Goldberg says they brought him -- they physically came to him  
22 with the Navidea securities in hand. Is that a truthful  
23 statement?

24 MR. KOOK: I believe it is, Your Honor. I was just  
25 trying to find where you --

1 THE COURT: Hold on. Believing it is doesn't really  
2 cut it. It either is or it isn't. It's not whether it's a  
3 little true.

4 MR. KOOK: I agree with Your Honor. I'm just trying  
5 to see where Your Honor's quoting from.

6 THE COURT: I'm sorry?

7 MR. KOOK: Your Honor, I think Your Honor said she was  
8 quoting from page 14 of a document?

9 THE COURT: I believe that it's the brief at page 14  
10 and then the brief at page 28. It's your memorandum of law in  
11 support of the motion for summary judgment and in opposition to  
12 the plaintiff's motion for summary judgment.

13 MR. KOOK: On page 14?

14 THE COURT: It's the second full paragraph on page 14  
15 that says, "Platinum never came to Dr. Goldberg with actual  
16 stock to deliver until October 2016, at which time the account  
17 was in place", and then it cites to the Goldberg affirmation at  
18 paragraph 43.

19 MR. KOOK: That is a true statement Your Honor. To  
20 the best of my knowledge, that is a true statement.

21 THE COURT: Well, we seem to have a disputed issue of  
22 fact.

23 You understand that this is very serious, and to the  
24 extent that -- and maybe we should look at the affirmation,  
25 because what he says is that Platinum never came to Dr.

1 Goldberg until October 2016. So Platinum is not a person.  
2 There would need to be a person. So were this to go to trial,  
3 Dr. Goldberg would have to -- would be called upon to testify  
4 to this, and he would have to name the person.

5 MR. KOOK: Yes, Your Honor.

6 THE COURT: And if it turned out to not be true, would  
7 be rather serious.

8 MR. BURNS: Your Honor, I --

9 THE COURT: Because I --

10 MR. BURNS: Sorry.

11 THE COURT: -- in October 2016, the winding up was  
12 already taking place. So it seems, on its face, curious that  
13 as of that point, that at that time, the segregated account was  
14 in place.

15 Let me go back to you, Mr. Burns.

16 MR. BURNS: Yes, Your Honor, if I could just say a few  
17 more -- a few more points on the discussion we've just been  
18 having?

19 It is undisputed that the segregated account with  
20 protections reasonably acceptable to Platinum was not in place  
21 any earlier than the end of September 2016. So that's a month  
22 following the commencement of the Cayman litigation. It  
23 just -- it hadn't gotten done, and there's a conclusive paper  
24 trail to that effect. And there's also the conclusive  
25 testimony and the unrebutted testimony of Platinum's former CFO

1 that -- so the warrants were issued by Navidea in 2015 pursuant  
2 to the exchange agreement. They were physical pieces of paper.  
3 They at all relevant times sat in PPVA's custody and PPVA's  
4 custodial vault. But that the reason why those stocks were not  
5 -- or why those securities were not transferred to Goldberg is  
6 because he had not, until the end of September, done what he  
7 was required to do under the term sheets as a condition  
8 precedent, which is set up the segregated accounts with a  
9 sufficient control protection agreement.

10 So the question of who came to whom is, I would  
11 submit, a little beside the point to the question of had Mr.  
12 Goldberg satisfied his conditions precedent to Platinum's  
13 obligation to perform, i.e., deliver the stock.

14 Platinum was at all times ready, willing, and able to  
15 deliver the stock. How do we know that? Well, because the  
16 physical documents, the physical warrants were at all times,  
17 since 2015, within Platinum's possession, custody, or control.  
18 They were in their custodial vault.

19 THE COURT: Can you talk about the purported  
20 assignment of the warrant to Dr. Goldberg in October of 2016?

21 MR. BURNS: Absolutely, Your Honor.

22 The circumstances were such that it all happened --  
23 let me pull my notes here for a moment.

24 THE COURT: Obviously, I'm interrupting you, so I'm  
25 going to extend the fifteen minutes because we've got some

1 threads here that I need to run to ground.

2 MR. BURNS: Oh, absolutely, Your Honor. I'd much  
3 rather -- I'd much rather answer your questions than say my  
4 piece.

5 So October 11th, 2016, two things happened that are of  
6 particular interest here.

7 We have an email from Goldberg himself reflecting the  
8 conversation that he had had with David Steinberg, who was a  
9 portfolio manager at Platinum. And Mr. Steinberg told Mr.  
10 Goldberg on that day, October 11th, 2016, that in light of the  
11 Cayman liquidation proceedings, everything was frozen.  
12 Platinum couldn't transfer the warrants or shares to Goldberg.

13 What happens then? Well, literally an hour or two  
14 later that same day, Goldberg cut Steinberg out of the  
15 conversation, reaches out directly to Mark Nordlicht, who was  
16 Platinum's former chief investment officer and now a convicted  
17 felon due to his work in Platinum, he told -- Goldberg told  
18 Nordlicht to just go ahead and execute the assignment form that  
19 was on a copy of the warrant that Mr. Goldberg provided to Mr.  
20 Nordlicht.

21 Goldberg prepared the form. He put in the actual  
22 date. So October 11th, 2016. Gave it to Nordlicht for his  
23 signature. Nordlicht said, whoa, hang on a second there, this  
24 should actually be dated a year earlier. Make of that what you  
25 will, but the clear intimation is let's try to get this -- have

1 a date that's before the commencement of the Cayman liquidation  
2 proceedings.

3 Goldberg sends the assignment form back to Nordlicht  
4 undated. Tells Nordlicht, put in whatever date you want.  
5 Nordlicht signs it. Puts in a date of October 2015 rather than  
6 October 2016. He sends it to Navidea and Goldberg takes it  
7 from there.

8 Goldberg is at that point the CEO of Navidea, and  
9 although the warrants themselves calls for the physical  
10 surrender of the actual paper warrants to Navidea to facilitate  
11 the transfer and reissue of the warrants, Goldberg, as Navidea  
12 CEO, got the job done. Got the warrants immediately reissued  
13 in his name rather than PPVA's name, and a month or so later  
14 executed them and got the five million and change shares of  
15 common stock.

16 THE COURT: And so no notes?

17 MR. BURNS: No notes. We've never seen a note, Your  
18 Honor. We've never -- we've scoured --

19 THE COURT: So never seen a note, and I mean, and he  
20 never paid for those shares, right?

21 MR. BURNS: Yeah, we absolutely -- we've never seen --  
22 there should be, according to the -- according to the term  
23 sheet themselves, the warrants had a value as of the end of  
24 December 2013 of about eleven million dollars, which means that  
25 PPVA should be sitting on a note of about eleven million

1 dollars, a seven million -- a seven-year note for eleven  
2 million dollars from Goldberg for these. We've never seen it.  
3 Goldberg's never produced it. Goldberg, in fact, testified at  
4 his deposition that he hadn't signed an actual note, and then  
5 sort of proceeded to bob and weave for the coming months to  
6 say, well, maybe I did sign a note. Maybe I don't remember if  
7 I signed a note. Maybe I don't disagree that I signed a note.  
8 Maybe the term sheets themselves are the notes and I never  
9 needed to issue a note. But we've never seen a note.

10 THE COURT: Okay, thanks. Could you pause for a  
11 second?

12 Mr. Kook?

13 MR. KOOK: Yes, Your Honor.

14 THE COURT: So backdating the assignment is a bad  
15 thing.

16 MR. KOOK: The assignment was backdated, and I haven't  
17 found any law that says the document can't be backdated to the  
18 date that the event actually took place. Nordlicht sent an  
19 email --

20 THE COURT: What event actually took -- what event  
21 actually took place?

22 MR. KOOK: That on --

23 THE COURT: You have a -- you have a --

24 MR. KOOK: -- 2015, when Navidea went to list the  
25 securities on the Tel Aviv Stock Exchange, there was a rule

1 that they couldn't list more than one type of security. So  
2 they didn't list the security -- the convertible stock and they  
3 changed it into warrants, and Goldberg --

4 THE COURT: All of this is completely beside the  
5 point. There was no assignment that took place on the date --  
6 on the assignment that was actually signed.

7 So two guys got together in October of 2016 knowing  
8 that the train had left the station because the winding up had  
9 already commenced, and one guy realized that, gee, it wouldn't  
10 really work to put the accurate date on it because the curtain  
11 had dropped on the winding up. So between the two of them,  
12 they just said, whatever, let's put an earlier date on it so it  
13 looks okay.

14 MR. KOOK: All the --

15 THE COURT: Not only is that not okay, and not only is  
16 it a question of that you can't find a case that says that bad,  
17 that's a crime.

18 MR. KOOK: Your Honor, there was no -- there was no  
19 dispute between the parties to the transaction that the  
20 ownership of these securities was transferred to Dr. Goldberg  
21 in March of 2014.

22 We have the --

23 THE COURT: What is -- wait, wait. What is it -- I  
24 don't know what you're talking about. You are skipping --

25 MR. KOOK: According to the --

1 THE COURT: You are skipping -- you are skipping  
2 everything. You are skipping the fact that there were actual  
3 documents that provided for the issuance of notes by Dr.  
4 Goldberg. Those notes -- if you -- those notes don't exist.  
5 If you -- if --

6 MR. KOOK: Your Honor?

7 THE COURT: The notes don't exist. And apparently  
8 your client admits that he never issued the notes and has said  
9 that, well, the term sheet's a note. I mean, a term sheet is  
10 not a note and a security agreement.

11 MR. KOOK: Your Honor, two points, if I may?

12 One, the term sheets can be a note. The term sheets  
13 say that no further documentation is necessary. But more  
14 importantly, Mr. SanFilippo testified --

15 THE COURT: No, no, no, no, no.

16 MR. KOOK: Mr. SanFilippo testified that he saw the  
17 signed note and the PP -- Platinum Partners and PPVA both  
18 issued statements that Dr. Goldberg owned the securities  
19 well -- years before the --

20 THE COURT: Your client --

21 MR. KOOK: -- the dissolution.

22 THE COURT: There's an email that says that your  
23 client -- in which your client says, "Here it is. Put in  
24 whatever date you want."

25 MR. KOOK: I believe that says --

1 THE COURT: You can look at the Goldberg affirmation,  
2 Exhibit 11, or the --

3 MR. KOOK: I would need the --

4 THE COURT: -- Burns declaration, Exhibit 13. You  
5 guys get together, realize they have a problem. Your client  
6 decides, all right, well, we'll draft up an assignment.  
7 Nordlicht realizes it's a problem, and your guy tells him,  
8 well, let's just solve the problem; here, put in whatever date  
9 you want. It's an email on October 14 from Goldberg to  
10 Nordlicht.

11 I've been doing this for a long time, Mr. Kook.

12 MR. KOOK: I understand, Your Honor.

13 THE COURT: I'm sure that that's not advice that you  
14 would give a client. In my many Chapter 11 cases, where, for  
15 example, the automatic stay comes into effect, the idea that  
16 you could transfer property of a debtor away, after the  
17 bankruptcy had commenced simply by backdating an assignment --

18 MR. KOOK: Your Honor, the issue is that it was not  
19 property of the PPVA at that point; ownership had already  
20 passed. In the amendment of the 13(d) (ph.) --

21 THE COURT: It --

22 MR. KOOK: -- which was certified --

23 THE COURT: It --

24 MR. KOOK: -- by PPVA and by Platinum Management,  
25 states that ownership of these underlying securities were owned

1 by Dr. Michael Goldberg. Platinum --

2 THE COURT: All right. So hold on --

3 MR. KOOK: Platinum had not owned --

4 THE COURT: Hold on, hold on.

5 So Mr. Burns --

6 MR. BURNS: Yes, Your Honor?

7 THE COURT: -- do you want to respond to that? Go  
8 ahead.

9 MR. BURNS: Sure. We're talking about the 13(d), Your  
10 Honor?

11 THE COURT: Yeah.

12 MR. KOOK: Amendment number 3.

13 MR. BURNS: Yeah. Okay. So my answer on the 13(d) is  
14 it's essentially impossible to figure out. There's one SEC  
15 filing that has the language that Mr. Kook is noting. And it  
16 does say something about ownership, but it's hard to tell what  
17 to make of this statement. It has a statement that -- it says  
18 5,411,850 shares of common stock is owned by Dr. Michael  
19 Goldberg. Well, that's never been the case with respect to the  
20 securities we're talking about here, right? I mean, we're  
21 talking about --

22 MR. KOOK: That goes to the --

23 MR. BURNS: Excuse me, Mr. Kook.

24 THE COURT: Let him finish his -- let him finish.  
25 Go ahead. Because you were --

1 MR. BURNS: You were talking about warrants. We're  
2 talking about warrants that were issued in 2015 that were  
3 exercisable for the issuance of 5.4 million-and-change shares  
4 of common stock. PPVA -- Platinum -- never exercised those  
5 warrants. It never held those common shares. So what exactly  
6 that 13(d) is referring to, I can't make heads or tails of.

7 I'll also note, Your Honor, that the warrants  
8 themselves contained Blocher provisions. So PPVA was prevented  
9 from exercising those warrants to the extent the exercise would  
10 take PPVA over 9.99 percent ownership in the Navidea common  
11 stock. So these warrants that we're talking about here were  
12 properly excludable from PPVA's beneficial ownership,  
13 regardless. The fact that they were excluded from PPVA's  
14 calculations in this document doesn't say that Goldberg owned  
15 them. It just means that they were properly excludable. And  
16 in fact, in the very same document, two paragraphs up from what  
17 we're talking about, PPVA said exactly that with specific  
18 reference to Navidea warrants: We excluded these because there  
19 are blockers that would prevent our exercise from these  
20 calculations.

21 So just taking this one statement that is, frankly,  
22 inscrutable and saying, based on this one statement made in  
23 this one 13(d), Mr. Goldberg owned these warrants outright,  
24 notwithstanding his undisputed lack of compliance with the  
25 conditions preceding what he was supposed to do. The notes,

1 the securities agreement -- that's currently all that defendant  
2 has to show that he owned this. But the fact of the matter is,  
3 he did not own it. He had not done what he was supposed to do  
4 under the term sheets, and that's being disputed.

5 MR. KOOK: Your Honor --

6 THE COURT: All right. Thank you.

7 Mr. Kook, hold on. Hold on, hold on.

8 So given that -- so you say, well, he already owned  
9 the shares. If he already owned everything, he was all set,  
10 right? He was all set. Your position is that he was all set  
11 before the winding up started.

12 MR. KOOK: Then it --

13 THE COURT: Then why go through this? Why go through  
14 this charade of an assignment --

15 MR. KOOK: Because he --

16 THE COURT: -- if he already had everything that he  
17 needed? You don't need --

18 MR. KOOK: He had --

19 THE COURT: -- an assignment. If he already owned it,  
20 what's being assigned?

21 MR. KOOK: In order to get --

22 THE COURT: Okay. He already owns it.

23 MR. KOOK: I'm trying to answer your question, Your  
24 Honor.

25 THE COURT: All right.

1 MR. KOOK: In order to get physical custody of the  
2 shares that he owned, the warrant had to be exercised. Navidea  
3 insisted that the warrant be transferred and then converted  
4 into the stock. The underlying security was owned by Dr.  
5 Goldberg. The exchange agreement in 2015 was an error. It  
6 happened two months earlier. The binding term sheet had been  
7 amended with the ownership still -- nothing stated contrary to  
8 the fact that ownership was in Dr. Goldberg's hands. The fact  
9 that the actual transfer PPVA was holding up did not take Dr.  
10 Goldberg's ownership away from him.

11 The statement that Mr. Burns says is inscrutable says,  
12 "Also excluded from the beneficial ownership calculation are  
13 5,411,850 shares of common stock owned by Dr. Michael M.  
14 Goldberg, a current director of Navidea, pursuant to an  
15 agreement effective March 28th, 2014, and amended effective  
16 June 11, 2015." We have Mr. SanFilippo, the CFO of Platinum  
17 Management stating that he actually saw the notes. We have the  
18 fact that the Platinum manager --

19 THE COURT: And in this order --

20 MR. KOOK: -- ordered the financial statement --

21 THE COURT: So assuming for the moment that all of  
22 this is true, which is very dubious, the deal was that these  
23 shares -- these warrants and then the shares -- were not a gift  
24 or compensation to Dr. Goldberg. He was supposed to have paid  
25 for them --

1 MR. KOOK: And he did, Your Honor.

2 THE COURT: -- right?

3 MR. KOOK: He gave for the --

4 THE COURT: How did he pay for them?

5 MR. KOOK: He gave full consideration, including the  
6 rights that for PPVA, and which PPVA had implemented, and  
7 that --

8 THE COURT: Wait, wait, wait. Stop, stop, stop.

9 MR. KOOK: -- with the (indiscernible) had done to --

10 THE COURT: You say --

11 MR. KOOK: -- to trade --

12 THE COURT: -- you want me to believe -- excuse me.

13 You want me to believe that there were notes. So  
14 first of all, he says, well, the term sheet is a note. Then he  
15 says, well, someone saw the notes. So if someone saw the  
16 notes, then, he seems to be arguing -- you seem to be arguing  
17 that there actually were notes, right? So the overall  
18 arrangement contemplated notes and the security interests.  
19 Okay. Were those notes paid?

20 MR. KOOK: I believe the mechanisms to trigger the  
21 payment had not occurred.

22 THE COURT: What do you mean? I mean, if there were  
23 notes --

24 MR. KOOK: The --

25 THE COURT: -- what were the terms of the note?

1 MR. KOOK: There was cash due to Dr. Goldberg, which  
2 he didn't receive. There was -- I apologize, Your Honor,  
3 for -- it's not on the tip of my tongue, as it were -- the  
4 mechanism for the full notes to be paid. I do not believe that  
5 the time for the payment of the notes had occurred.

6 But in the first instance -- or one of the first  
7 instances, what PPVA is doing here is saying there was a breach  
8 of contract, and it has no standing to say there's a breach of  
9 contract. The parties to the contract treated the contract --  
10 both parties have fully adhered to, fully implemented, and that  
11 Dr. Goldberg owned the securities that was certified by PPVA  
12 and private management. We asked for the financial statements  
13 to see how they were kept on the books of the company. We were  
14 told they weren't available during discovery. Mr. SanFilippo  
15 had had the ordered financial statements, which said that the  
16 fund no longer owned the securities, but that Dr. Goldberg  
17 owned them.

18 Mr. Burns is trying to insist --

19 THE COURT: So which --

20 MR. KOOK: -- that all the forms --

21 THE COURT: Let me get this straight. There's no  
22 notes. There's no segregated account until the time when this  
23 backdated assignment occurs, which is the piece of paper that  
24 Goldberg cooks up himself so that he, wearing his Navidea hat,  
25 can give himself the shares. That's what happens here.

1 Now, the winding up --

2 MR. KOOK: I don't believe that --

3 THE COURT: -- the winding up commences. Goldberg  
4 realizes he has a problem. So he comes up with this assignment  
5 thing because if he already actually had the warrant, life  
6 would be good, right? So then he comes up with this assignment  
7 saying, Nordlicht says we have a problem; the answer to that is  
8 put in whatever date you want. So he backdates it by a year,  
9 which is a completely made-up date.

10 MR. KOOK: So Your Honor, it's not a --

11 THE COURT: And then --

12 MR. KOOK: -- it is not a completely made-up date.

13 It's the date --

14 THE COURT: In what sense, when your client says to  
15 Mr. Nordlicht, "Put in whatever date you want" --

16 MR. KOOK: I don't believe --

17 THE COURT: -- is that not --

18 MR. KOOK: I don't have the email right in front of  
19 me. I don't believe that's the exact language. But the point  
20 is that that's the date --

21 THE COURT: Mr. Burns?

22 Hold on.

23 Mr. Burns --

24 MR. BURNS: Yes, Your Honor?

25 THE COURT: -- can you help me out here? Do you want

1 to read the exact language of the email?

2 MR. KOOK: Is it in your --

3 MR. BURNS: I would like to, Your Honor. I'm flipping  
4 through it.

5 MR. KOOK: I have the email that's here, but I can't  
6 find the one you're talking about.

7 MR. BURNS: I believe it's Exhibit 13 to my  
8 affirmation or --

9 THE COURT: Yes, it's Exhibit 13 to your declaration.

10 MR. BURNS: So email from Michael Goldberg to Mark  
11 Nordlicht, 10/14/2016, 4:34 p.m., "Here it is. Put in whatever  
12 date you want."

13 THE COURT: Yeah. So if there were a real date, you  
14 would say, yeah, date it as of this date because that's when  
15 the assignment -- that's when the transfer actually happened.

16 MR. KOOK: That's what Nordlicht --

17 THE COURT: And I --

18 MR. KOOK: That's what Nordlicht stated -- and that's  
19 quoted in the email; it's quoted in our brief, that that's the  
20 date you owned him. That's the date that he -- that's the date  
21 that after the daily exchange of the convertible D referred on  
22 the Tel Aviv stock exchange occurred, and the warrants were  
23 issued in its place, and Goldberg owned them. He owned them as  
24 of that date. The parties to the transaction -- PPVA was not a  
25 part of the transaction, although all its certifications and

1 statements contemporaneous with the transaction are that  
2 Goldberg was the owner. All the statements from the parties of  
3 the transactions are that Goldberg was the owner. Those were  
4 the certified statements by PPVA and by Platinum Management,  
5 that Goldberg was the owner.

6 There were difficulties, screw-ups, whatever it was,  
7 from PPVA that they never transferred this physical possession  
8 of the securities owned by Dr. Goldberg until a later date.  
9 But that didn't change Dr. Goldberg's ownership from pre-  
10 liquidation --

11 THE COURT: Well --

12 MR. KOOK: -- which is acknowledged by all the  
13 parties. He owned --

14 THE COURT: What --

15 MR. KOOK: -- them before the liquidation.

16 THE COURT: I'm sorry, I'm just missing this.

17 There's a term sheet and an amended term sheet. They  
18 have provisions that say that there needs to be a segregated  
19 account set up and that there need to be notes issued, right?  
20 So here, a segregated account is not set up until after the  
21 winding up is commenced. No one presents the notes. All we  
22 have is someone thinks they saw the notes. You're saying,  
23 well, you think -- I mean, were there notes or were there not  
24 notes? It's a yes or no -- it's a yes-or-no question. There's  
25 a condition precedent that says that Dr. Goldberg has to

1 execute notes.

2 MR. KOOK: Dr. Goldberg --

3 THE COURT: Did he?

4 MR. KOOK: -- understood that the notes were  
5 effectively signed, the term sheet setting forth the terms of  
6 the notes.

7 THE COURT: No, no, no.

8 MR. KOOK: I will not -- Your Honor --

9 THE COURT: This is not --

10 MR. KOOK: -- let me tell you --

11 THE COURT: -- this is not Dr. --

12 MR. KOOK: -- Dr. Goldberg --

13 THE COURT: This is not about what Dr. Goldberg  
14 understood. I'm asking --

15 MR. KOOK: Dr. Goldberg testified --

16 THE COURT: I'm asking --

17 MR. KOOK: Dr. Goldberg testified that he --

18 THE COURT: If I put Mr. Goldberg --

19 MR. KOOK: -- he --

20 THE COURT: If I put Dr. Goldberg on the witness  
21 stand, under oath, and I ask the question, Dr. Goldberg,  
22 pursuant to the terms of the term sheet and the amended term  
23 sheet, did you execute notes as contemplated by this agreement  
24 and these transactions, would the answer be yes or no?

25 MR. KOOK: I believe he will answer, as he testified,

1 that he felt he was obligated upon signing the term sheets, and  
2 those were the notes. In fact, although he testified that he  
3 did not recall signing the notes, another document -- a note,  
4 per se -- Mr. SanFilippo said that he saw the notes. So in  
5 the --

6 THE COURT: Let's just take a step back and reflect on  
7 this for a moment. Sophisticated fund manager, right, engaged  
8 in a very valuable transaction that requires that he issue  
9 notes in order to ultimately become the owner of millions of  
10 dollars of securities, thinks that the word "note" doesn't mean  
11 exactly what it means, a note, that maybe just the actual term  
12 sheet is good enough.

13 MR. KOOK: That's what the term sheet said.

14 THE COURT: I mean, on its face, is that -- on its  
15 face, that is incredible. It is not credible. That is not a  
16 credible position to take. And then relies on, oh, well,  
17 someone saw the notes, so even though I didn't think I had to  
18 actually execute notes, and I can't recall that I did, oh,  
19 someone else saw them; so yeah, I satisfied the notes  
20 provision.

21 That's what you're asking me to believe?

22 MR. KOOK: Those are the facts, Your Honor. The term  
23 sheets state that a note from the document had to be executed  
24 and they were binding. Dr. Goldberg believed that he --  
25 believed the words of the agreement --

1 THE COURT: But when the term sheet -- when the term  
2 sheet says -- when the term sheet says, as a condition, that  
3 notes are required, and that there's a provision in the term  
4 sheet that says no other documentation is required, you're  
5 telling me that that latter provision means that the  
6 requirement to execute notes, that that was just kidding, that  
7 that overrides that and doesn't --

8 MR. KOOK: It is not kidding. It says --

9 THE COURT: -- and means no notes to be issued?  
10 That's ridiculous.

11 MR. KOOK: I don't --

12 THE COURT: That's not believable.

13 MR. KOOK: I don't believe it is ridiculous, Your  
14 Honor. I believe the Court will --

15 THE COURT: That's not the way corporate documents  
16 work. When a term sheet says that here's the deal and we're  
17 going to do X, Y, and Z documents, and then at the end, it says  
18 that no other documents need be required, that provision  
19 doesn't negate the earlier provision. It just says you don't  
20 need to issue any other documents in addition to those.

21 MR. KOOK: I believe the main --

22 THE COURT: What would be the point of saying that --

23 MR. KOOK: -- I believe it meaning may be you don't  
24 have to produce issue any other documents, and if none are  
25 issued, then you're bound by what's in the binding term sheet.

1 THE COURT: Yeah, and in the binding term sheet, it  
2 says that he had --

3 MR. KOOK: All the --

4 THE COURT: -- to issue notes and he had to --

5 MR. KOOK: All the terms of the notes --

6 THE COURT: -- (indiscernible).

7 MR. KOOK: All the terms of the note are set forth in  
8 the term sheet. I don't think there's any dispute as to that.  
9 All the terms are in there.

10 THE COURT: Then the term sheet -- then the term sheet  
11 would not have said that there requires the issuance of notes.

12 MR. KOOK: Your Honor, but that's why the term  
13 sheet --

14 THE COURT: It's not a common-sense reading of the  
15 document.

16 MR. KOOK: That's why the term sheet says it's in full  
17 force and effect, even if no further documents are exchanged.  
18 And agreements say that all the time. That's why the  
19 agreements state that. There are there are term sheets that  
20 are preliminary and --

21 THE COURT: No. There are rules of construction that  
22 you aren't supposed to read documents in a way that make no  
23 sense. It makes no sense that parties would draft a term sheet  
24 that contemplates the signing of additional agreements, when,  
25 in fact, what you're saying they really meant was this is the

1 only document we need because then, you would draft the term  
2 sheet by saying, by signing this term sheet, there is now an  
3 obligation.

4 MR. KOOK: Yes, exactly.

5 THE COURT: A term sheet would --

6 MR. KOOK: Exactly.

7 THE COURT: So then, exactly, give me the evidence of  
8 him paying. So then why are you telling me that I should pay  
9 attention to the fact that someone saw the note? One of two  
10 things are true: either it's your position that no notes were  
11 needed, or it's your position that, I guess, notes were needed;  
12 I don't remember signing them; I don't remember, but somebody  
13 else saw them.

14 MR. KOOK: I think both are correct, Your Honor.

15 Dr. Goldberg, if he wanted to lie, could have said  
16 yes, I remember signing them. But he said, I don't remember  
17 signing them; I didn't think they were necessary. And in fact,  
18 as Your Honor stated in summing up what it said, that it was  
19 enforceable and he was bound when he signed it. In point of  
20 fact --

21 THE COURT: Okay. Can you --

22 MR. KOOK: -- in point of fact --

23 THE COURT: -- go back for a minute?

24 MR. KOOK: -- although Dr. Goldberg doesn't recall it,  
25 but if he found that he did, and Mr. Filippo (sic), who has no

1 interest in stating otherwise, said -- he stated specifically  
2 that he saw the notes. Dr. Goldberg didn't remember signing  
3 them. He didn't hem and haw. He said he didn't remember  
4 signing them. And he said, I didn't think they were necessary  
5 because I was bound by the terms that were set forth in the  
6 agreement and no further of the documents should  
7 (indiscernible), and I was bound as a part of the agreement.  
8 And that's how both parties took the agreement to be. In fact,  
9 the power -- and he did sign it over --

10 THE COURT: Okay. Can you --

11 MR. KOOK: -- and he doesn't recall it.

12 THE COURT: Can you stop for a -- Mr. Kook, could you  
13 please stop?

14 MR. KOOK: Yes.

15 THE COURT: Okay. Take a breather. Take a breather.  
16 Mr. Burns --

17 MR. BURNS: Yes, Your Honor?

18 THE COURT: Could you respond to some of this past --  
19 some or all of this past colloquy that we've had here?

20 MR. BURNS: Sure, Your Honor. Let me just start with,  
21 if we, PPVA, had in our file notes from Dr. Goldberg for eleven  
22 million dollars, we would not be here before Your Honor,  
23 fighting about four million dollars. We would have long since  
24 taken those notes, brought them to state supreme court, and  
25 collected on them, pursuant to summary judgment in lieu of

1 complaint. It would be easy.

2 The problem is we don't have the notes because there  
3 were no notes. And if we were to go into state supreme court  
4 and say, hey, judge, we're moving for summary judgment, in lieu  
5 of complaint on these notes; the problem is there are no notes,  
6 but the agreement itself is the note, so could we please have  
7 eleven million dollars, we would be laughed out of court. The  
8 term sheets are not notes; the notes were never issued.

9 THE COURT: What about the argument that the fact that  
10 there's a catchall provision in the term sheet that says, no  
11 other documents need to be executed, somehow overrides the  
12 requirement that Dr. Goldberg issue notes?

13 MR. BURNS: We simply don't think that's a fair  
14 reading. The term sheets say "shall issue". "Shall issue"  
15 suggests a thing that will happen after the agreement is  
16 executed. The notion that the agreement itself, as the notes,  
17 it's flatly contradicted by the fact that the agreement itself,  
18 says, Dr. Goldberg shall issue these notes. And he never did.  
19 It's not a reasonable reading of what's required under the  
20 under the term sheets.

21 And again, the fact of the matter -- just to bring it  
22 back to the segregated accounts, whether or not -- these notes  
23 are sort of a sideshow, albeit an important sideshow, because  
24 the fact of the matter is, it is undisputed that the other  
25 material condition precedent that we're talking about here is

1 the creation of the segregated account of control protection  
2 satisfactory to Platinum did not -- absolutely, positively did  
3 not happen until post-liquidations.

4 MR. KOOK: Your Honor, there was no statement in the  
5 term sheet as to when the segregated account had to be set up.  
6 If did not have to be set up, as a practical matter, until the  
7 physical transfer occurred on, and when the physical transfer  
8 was to occur, this account was it was set up. There's nothing  
9 in the document -- this creation of terms of the agreement that  
10 aren't there --

11 THE COURT: Let's be a little reality based here. The  
12 overall structure of the transaction seems to not be disputed,  
13 that there were to be -- that there were to be warrants and,  
14 ultimately, stock that Dr. Goldberg was to pay for. The  
15 payment or the obligation to pay was to be reflected in notes,  
16 putting aside what I would characterize as the incredible  
17 argument that no notes were required and that the term sheet  
18 itself was a note.

19 Okay. So he was going to get the stock. He was going  
20 to pay for it. And in order to secure the payment stream,  
21 there was going to be a note in a control agreement, with a  
22 segregated account, because that's how you document a  
23 transaction like that. So the idea that this transaction was  
24 going to proceed on the basis of what I would call whatever is  
25 simply not credible, that it didn't matter whether or not there

1 were notes, that it didn't matter whether or not there was a  
2 segregated account. That's just not the way a transaction like  
3 this proceeds.

4 In order to effect, with an E, a security interest on  
5 the securities, in order to secure the repayment of the notes,  
6 they would have to be a segregated account. There was none of  
7 this. None of these men followed any rules. They just did  
8 what they wanted. And one of the things that they did was  
9 realize, once the winding-up petition was filed, that they  
10 hadn't done what they needed to do to actually get the Navidea  
11 stock for Dr. Goldberg. So they figure out this idea of a  
12 backdated assignment that they execute with, "Put in whatever  
13 date you want". And so Dr. Goldberg does that; Nordlicht signs  
14 it, backdates it. Goldberg hands it to himself and issues  
15 himself the shares. And you're telling me that that's all  
16 completely good, completely good?

17 MR. KOOK: Yes, Your Honor, because he owned the stock  
18 in March -- he owned the securities March 24, and they were not  
19 part of the liquidated estate. The ownership had already  
20 passed, and it belonged to Dr. Goldberg. He had to go through  
21 (indiscernible) --

22 THE COURT: And you based that statement --

23 MR. KOOK: -- for years to get vested --

24 THE COURT: -- base that statement on -- the only  
25 support for that statement is that there's a one-sentence

1 statement in an SEC document?

2 MR. KOOK: And on the statement in the Platinum  
3 Management -- I think it's a memorandum dated July 9, 2015,  
4 that Goldberg owns the notes, the statements in the 2014  
5 audited financial statement that PPVA does not own the notes  
6 anymore, they're not part of the estate, on the fact that  
7 the --

8 THE COURT: No, no, no. Hold on, hold on, hold on.  
9 There's no estate at that point.

10 MR. KOOK: They're not part of -- they're not part  
11 of -- they're not part of PPVA's corpus of assets. They don't  
12 belong to PPVA --

13 THE COURT: Okay. Hold on. Please pause for a  
14 moment.

15 Mr. Burns, could you respond to that particular point?

16 MR. BURNS: Sure, Your Honor. I'm not sure whether  
17 we're talking about the July 2015 memo or the financial  
18 statement, but I'll address them both if Your Honor would like.

19 THE COURT: Thank you. Yes, I would.

20 MR. BURNS: So we have a July 9th, 2015 memo. It's  
21 Goldberg affidavit, Exhibit 4, which is by one of Platinum's  
22 in-house accountants. And it recommends certain accounting  
23 treatment for these Goldberg transactions. And Mr. Kook is  
24 correct that it contains one very broad statement regarding  
25 ownership.

1           And my response to that is, is as follows. These and  
2 the financial statements are accounting documents. They say  
3 nothing whatsoever about actual legal ownership. So the  
4 financial statements, the 2014 financial statements, are  
5 exactly that. These are accrual accounting documents where --  
6 and this is exactly what Platinum's former CFO, Mr. SanFilippo,  
7 testified to, that these statements, Platinum used accrual  
8 accounting. So an asset or an obligation gets booked when it's  
9 incurred, not when the thing underlying it actually happens.  
10 So Goldberg agrees in his term sheet to issue notes; okay, book  
11 them then. Platinum agrees in those term sheets to -- when it  
12 gets the notes, to give the securities to Goldberg; okay, book  
13 it then. And that's exactly what they did in the 2014  
14 financial statements. And that's exactly what this July 2015  
15 memo talks about.

16           Mr. SanFilippo testified that this is accrual  
17 accounting and it doesn't bear any resemblance, necessarily --  
18 although it may, but in this case does not -- to the underlying  
19 factual or legal reality of who owned the stock at the time.  
20 The fact that Platinum had booked a note receivable from  
21 Goldberg in its financial statement does not, in fact, indicate  
22 that Goldberg actually provided the note because, as we've been  
23 discussing, there's no indication that he did. The fact that  
24 Platinum booked the note from Goldberg -- the note  
25 receivable -- and, through various accounting treatments, said

1 we're going to keep the shares in our account, but then grant  
2 Goldberg -- book a participation interest for him to recognize  
3 the term sheet, doesn't indicate that as of that magical  
4 moment, Goldberg was the legal owner of these warrants because,  
5 as we've been discussing, because he had not done the things  
6 that he needed to do in order to become the legal owner.

7 MR. KOOK: Your Honor, the memo states that the fund  
8 lead does not have control or ownership of the securities. Mr.  
9 Burns' own email, which refers to financial statements, which  
10 we asked for, that the PPVA said it didn't have, and then  
11 magically appeared when Mr. SanFilippo had the ordered  
12 financial statement, states that all the statements -- notes  
13 receivable from Goldberg were booked per Goldberg's term sheet,  
14 and Navidea Series B preferred shares. It was referenced in  
15 Mr. Goldberg's term sheet and all the warrants for which they  
16 were exchanged in 2005. They were exchanged it confirms the  
17 Series B preferred stocks were exchanged for the warrants. And  
18 the Series B belonged to Goldberg, and then the warrants that  
19 were going to Goldbergs were not included within the accounting  
20 of PPVA's position.

21 In their brief --

22 THE COURT: Can you --

23 MR. KOOK: If I may have just one more minute, Your  
24 Honor?

25 In their brief --

1 THE COURT: Can I just -- hold on. Please stop,  
2 please stop.

3 MR. KOOK: Sure.

4 THE COURT: Can someone just point me to where I can  
5 find this language?

6 MR. BURNS: If you're looking for -- Your Honor, if  
7 you're looking for what Mr. Kook's talking about, about my  
8 email to him of January 2020, it's Exhibit A to his primary  
9 affidavit.

10 MR. KOOK: That's correct.

11 THE COURT: Hold on. Give me a moment. Let me just  
12 try to find it, please, in my binder.

13 MR. KOOK: Sure, Your Honor.

14 THE COURT: So Mr. Kook, it's your affirmation?

15 MR. KOOK: It's Exhibit A to my affirmation.

16 THE COURT: Hold on.

17 So this is an email from Mr. Burns to you, Mr. Kook,  
18 saying, you stipulate that as of the NAV statement for the  
19 period ending 6/30/14, notes receivable from Goldberg were  
20 booked, per Goldberg's term sheet with Platinum Management.  
21 And then Navidea Series B preferred shares and were the  
22 warrants for which they were exchanged in 2015.

23 MR. KOOK: It's stating the Series B was exchanged for  
24 the warrants in 2015, before the liquidation.

25 MR. BURNS: Well, that's not --

1 THE COURT: But the --

2 MR. BURNS: There's no dispute about that. That, of  
3 course, happened; that's what we're talking about.

4 THE COURT: Yeah.

5 MR. KOOK: You're stipulating to it.

6 MR. BURNS: I will stipulate to --

7 THE COURT: No, we're talking about --

8 MR. BURNS: -- it again. That's exactly what  
9 happened.

10 THE COURT: We're talking about -- but the Series  
11 preferred Bs were exchanged for the warrants. But the warrants  
12 then needed to be exchanged for the Navidea common, right?  
13 That's a different exchange, right?

14 MR. BURNS: Correct, Your Honor. The --

15 MR. KOOK: But it doesn't affect ownership of the  
16 securities and who owned them as of the time of liquidation.  
17 They were owned by Dr. Goldberg. The fact that PPVA did not  
18 transfer physical possession does not alter the fact that Dr.  
19 Goldberg was the owner. That's what's in 13(d), certified by  
20 Platinum Management and --

21 THE COURT: Hold on.

22 MR. KOOK: -- PPVA.

23 THE COURT: Hold on. Please stop.

24 All this says is that the Navidea Series B preferred  
25 shares and/or the warrants for which they were exchanged in

1 2015. That's not the exchange of the warrants for the Navidea  
2 stock in 2016. That's the exchange --

3 MR. BURNS: No, Your Honor. That's the --

4 MR. KOOK: But the warrants --

5 THE COURT: -- right?

6 MR. KOOK: By going --

7 MR. BURNS: The 2015 transaction, Your Honor, in which  
8 Navidea exchanged --

9 THE COURT: Yeah.

10 MR. BURNS: -- the Series B preferred for the  
11 warrants --

12 THE COURT: Right.

13 MR. BURNS: -- that we're now talking about. One  
14 became the other --

15 THE COURT: Right.

16 MR. BURNS: -- and the warrants were reissued in  
17 PPVA's name. That's what that is.

18 THE COURT: That's right. Right.

19 So all that Mr. Burns is stipulating to is that they  
20 are not included within the accounting of PPVA's positions and  
21 that this accounting treatment continued so long as they were  
22 prepared. So this is not proof of ownership. This is  
23 reflective of accrual accounting. There was an agreement out  
24 there, in which, for the purposes of accurately reflecting it  
25 on the financial statement, there was an obligation to reveal,

1 if you will, to disclose that there was this agreement out  
2 there, in which the company was to receive notes receivable  
3 from Goldberg.

4 MR. KOOK: Your Honor --

5 MR. BURNS: You're (indiscernible), Your Honor; that's  
6 correct. I mean, this email is confirming that the same  
7 accounting treatment that I discussed with reference to the  
8 2014 financials was also applied in connection with the monthly  
9 net asset value statement. That's all this email says.

10 MR. KOOK: Well, Your Honor, the 13(d) certified by  
11 PPVA and Platinum Management states that the 5,411,850 shares  
12 of common stock owned by Dr. Michael M. Goldberg are excluded  
13 from the beneficial ownership of PPVA and Platinum Management.  
14 They're owned by Dr. Michael Goldberg. It can't be more clear  
15 than that. It's not opaque. It's not worthless rhetoric.  
16 It's a statement in the 13(d) filed with the SEC and certified  
17 by PPVA and Platinum Management.

18 MR. BURNS: Only, Your Honor, there never were 5.4  
19 million common shares of the Navidea until Mr. Goldberg had the  
20 warrant transferred to him and exercised the warrant in 2017.

21 MR. KOOK: He owned them. The fact that they weren't  
22 physically transferred and that PPVA failed to exercise a  
23 warrant is not sort of a ha-ha gotcha. The ownership had  
24 already vested in Dr. Goldberg. That's in the certified --

25 THE COURT: If the ownership --

1 MR. KOOK: -- (indiscernible).

2 THE COURT: If the ownership had already vested in Dr.  
3 Goldberg, why did the assignment take place when it did? The  
4 ownership had already vested. Why was there an assignment?  
5 Why?

6 MR. KOOK: That's what Navidea wanted. And they  
7 were --

8 THE COURT: That's what Navidea wanted? In other  
9 words, that's what Dr. Goldberg knew that he needed to paper  
10 over this crooked line?

11 MR. KOOK: It wasn't a crooked line. It's a statement  
12 of ownership and all the -- say that it wasn't a real  
13 accounting --

14 THE COURT: Why --

15 MR. KOOK: -- it was a different accounting -- in the  
16 one spreadsheet --

17 THE COURT: Then why did Dr. Goldberg tell Mr.  
18 Nordlicht, "Put in whatever date you want"?

19 MR. KOOK: Because he --

20 THE COURT: Why wouldn't Dr. Goldberg -- there is a  
21 moment in time -- you're telling me that there is an exact  
22 moment in time when ownership transferred. So if the  
23 assignments were merely a piece of paper needed to document  
24 something that had already occurred, then Dr. Goldberg, being  
25 the sophisticated and honest businessman that you're telling me

1 that he was, would have said, put this date on it because  
2 that's when the transfer actually occurred. None of this hangs  
3 together. None of this makes any sense.

4 MR. KOOK: In the October --

5 THE COURT: There were --

6 MR. KOOK: In the October 14, 2016 email sent by  
7 Nordlicht, talking about dating the assignment as of October  
8 2015, Nordlicht says the date on it now -- can you resend me  
9 the assignment form without date listed or put in correct date?  
10 It has the date as of October 2016. That was the date that was  
11 sent. No, he says, that's not accurate, as you were owned  
12 then, as of October 1, 2015, when we did the exchange of  
13 (indiscernible). That's Exhibit 11 to Goldberg's affidavit.  
14 That's the email by Nordlicht. And Nordlicht is saying that  
15 we're going to change -- that the date should be October 2015  
16 because that's the date that you -- "you", meaning Dr.  
17 Goldberg -- owned them when the exchange on the Tel Aviv Stock  
18 Exchange was done. That's when Dr. Goldberg owned them.

19 MR. BURNS: If I may, Your Honor --

20 THE COURT: Yeah.

21 MR. BURNS: -- the October 1st, 2015 date has no  
22 significance whatsoever to anything that actually happened in  
23 this case. August 20th, 2015 is the date on which the  
24 securities exchange agreement was executed between PPVA and  
25 Navidea, pursuant to which the Series B preferred shares at

1 PPVA held or turned into the warrants that we're talking about  
2 here. And those warrants were reissued on August 20th, 2015.  
3 So October 1st, 2015 is a completely, completely made-up date.  
4 It has no connection whatsoever to anything.

5 MR. KOOK: It has connection to the fact that it's  
6 after the date when the warrants were issued and when Dr.  
7 Goldberg owned them.

8 THE COURT: It's a made-up date. You have put nothing  
9 in your papers that establishes a date certain on which  
10 anything occurred. Everything that's in your papers is self-  
11 contradictory. You didn't need notes, but maybe there were  
12 notes. I don't remember signing them, but someone else saw  
13 them. There were notes, but I didn't have to pay them. It  
14 says something about a segregated account, but it didn't have  
15 to be set up first, and oh, it was set up when I decided to  
16 hand myself the shares after I engaged in this back and forth  
17 with Nordlicht to execute an assignment that I didn't really  
18 actually need because I already own the shares, and then I just  
19 let Nordlicht put whatever date on it that he thought was  
20 right.

21 MR. KOOK: Your Honor, I understand that's how you  
22 view them at this point, but I believe that the facts are  
23 different and that ownership passed when the binding term  
24 sheets were signed, and that Goldberg's ownership of the  
25 underlying common shares was acknowledged and certified by all

1 the parties to the transaction, and even PPVA, which was not a  
2 party to the transaction.

3 THE COURT: Mr. Burns, if I were to find --

4 MR. BURNS: Yes, Your Honor?

5 THE COURT: -- if I were to find that there is no  
6 disputed issue of material facts, that the notes provision was  
7 a condition precedent and was not satisfied, without reaching  
8 anything else, do you win? Does PPVA win?

9 MR. BURNS: Yes, I believe so, Your Honor. I believe  
10 that would be conclusive as to the question -- at least with  
11 respect to our turnover claim, which is our primary claim here  
12 as to who owned the property as of that magical moment in time,  
13 on August 23rd, 2016, when the Cayman liquidation proceedings  
14 commenced. So if Goldberg hadn't done what he needed to do, if  
15 he hadn't satisfied his conditions precedent, PPVA or Platinum  
16 Management was under no obligation to transfer the securities  
17 to him. And therefore, he had no live right to those  
18 securities as of that moment in time. It's clear the title  
19 hadn't passed. It's clear that physical possession remained  
20 with PPVA.

21 But if he hadn't done what he needed to do and he  
22 hadn't satisfied those conditions, he had no live right, as of  
23 that moment in time, to receive those securities. And that  
24 means that those securities remain property of PPVA, which they  
25 did at all times. They were in PPVA's name and in PPVA's

1 possession. And he had no live right as of that moment to  
2 receive them.

3 So whatever happened after that moment of eventually  
4 setting up the segregated account a month or so after  
5 liquidation and concocting this backdated transaction a month  
6 after that doesn't matter for purposes of whether this property  
7 was PPVA's as of the time the Cayman liquidation proceeding  
8 commenced.

9 MR. KOOK: Your Honor, if I may. If Your Honor were  
10 to --

11 THE COURT: Yeah, go ahead.

12 MR. KOOK: -- if Your Honor were to find that -- and  
13 we respectfully submit that the facts, even if they're heavily  
14 disputed or undisputed, show the opposite. PPVA did not suffer  
15 any damage because it could not sell the warrant. It could not  
16 convert it into common stock because of the blockers and the  
17 9.99 percent rule. So it could never have sold it, and it  
18 could never have realized any monetary gain off of it or  
19 monetary impact off of the warrants.

20 THE COURT: Okay. Hold on a minute.

21 Mr. Burns, what do you think about that?

22 MR. BURNS: Well, I could say that the blockers are  
23 not absolute. I mean, we could have -- had these warrants sat  
24 in our possession and had they not been -- when we first  
25 learned about this, by virtue of the Navidea's SEC filing that

1 Mr. Goldberg signed in -- I think it was early 2017, we  
2 certainly could have, as liquidators, tried to do something  
3 with respect to monetizing these warrants.

4 But we were deprived of that opportunity, and the  
5 shares sat in Mr. Goldberg's account. And I don't know if they  
6 still sit in Mr. Goldberg's account today, but the fact of the  
7 matter is there has been gross diminution in value of those  
8 underlying shares since the time they were improperly taken by  
9 Mr. Goldberg. And that's not on us, nor should it be.

10 MR. KOOK: But even if they were improperly taken --  
11 and we submit that they were not; everything was proper, above  
12 board, and certified -- there's still no possibility for PPVA  
13 to monetize on those warrants or to convert them because of  
14 the --

15 THE COURT: But --

16 MR. KOOK: -- 9.99 percent rule.

17 THE COURT: -- Mr. Kook, you can't do something wrong  
18 and then say, but it didn't matter to you anyway.

19 MR. KOOK: It didn't cause damage. Happens all the  
20 time.

21 THE COURT: Well, then --

22 MR. KOOK: There are cases galore where people can  
23 prove a wrong occurred, but they can't prove damages. They  
24 don't just pop out of the air --

25 THE COURT: All right. You --

1 MR. BURNS: Your Honor, the Blocker provision -- it's  
2 in Exhibit 5 to my opening declaration --

3 THE COURT: Yeah.

4 MR. BURNS: -- and it's section 7(b), which is on page  
5 8 of the document -- and it's a dense provision, and I can't  
6 claim mastery over it, but it says --

7 THE COURT: Yeah.

8 MR. BURNS: -- you can't exercise this warrant if it  
9 would take you over ninety-nine percent, but there are  
10 circumstances in which you might be able to, and here's the  
11 procedure for doing so. So it's not as if had these warrants  
12 not been taken from PPVA that we were powerless. We just had  
13 to sit, and the liquidators just needed to sit idly by and  
14 watch the value diminished to the vanishing point. There  
15 were --

16 THE COURT: Mr. Kook --

17 MR. BURNS: -- options available.

18 THE COURT: -- are the shares still in Mr. Goldberg's  
19 account?

20 MR. KOOK: I believe so. I'd have to confirm that.

21 THE COURT: Where does Mr. Goldberg reside?

22 MR. KOOK: I believe they are. There was a  
23 restrictive legend on the share that he couldn't sell them for  
24 sixty days. And then Navidea, which Mr. Gold is no longer  
25 affiliated with, stated that they would not effectuate any sale

1 of the underlying securities until this action was resolved. I  
2 believe it's the current status.

3 MR. BURNS: And obviously, Your Honor, a lot of water  
4 has passed under the bridge since late 2016, when these  
5 warrants were taken by Mr. Goldberg. But some of the water  
6 that's passed under the bridge is -- as of the time of our  
7 papers, Navidea common stock was down ninety-three percent from  
8 the moment of the taking. And in preparation for this  
9 argument, I just took a quick gander at that where it's at  
10 today, and that's unchanged. So it's down -- the shares that  
11 now, to the extent Mr. Goldberg still possesses them --  
12 worthless is too strong a term, but they are a mere sliver of  
13 their value at the time that -- at the time of the commencement  
14 of the Cayman proceeding and at the time of the October 2016  
15 taking by Mr. Goldberg.

16 THE COURT: So the PPVA, the foreign representative,  
17 is asking not for turnover of the actual shares, but you're  
18 asking for, basically, a monetary recovery, a judgment as to  
19 the amount that they would have -- that they were worth at the  
20 time of the Chapter 15?

21 MR. BURNS: That's correct, Your Honor. And we cite  
22 case law in our opening briefs, which states that in cases of  
23 dissipation, including, as the case would say, a diminution in  
24 value such as that we're talking about here, that mere recovery  
25 of the thing that was taken -- the property taken -- wouldn't

1 be a sufficient turnover remedy, and that an actual judgment  
2 based on the moment at which the property was transferred away  
3 from the debtor is a proper remedy.

4 MR. KOOK: Again, we disagree because PPVA could not  
5 sell the stock or the warrants.

6 THE COURT: But again, you don't get to -- you don't  
7 get to say -- you don't get to -- someone doesn't get to take a  
8 pair of shoes belonging -- and say, well, they didn't fit your  
9 feet anyway. I mean, you don't get to do something improper  
10 and then defend it by saying, it wasn't worth that much to you.  
11 I mean, that's not right.

12 MR. KOOK: Your Honor, courts often award judgment,  
13 but they either say there's no damage or they award one dollar  
14 in nominal damages. PPVA did not suffer any monetary damage.

15 MR. BURNS: I don't want to restate what I've already  
16 said, Your Honor --

17 THE COURT: Yeah.

18 MR. BURNS: -- but as I said, under the blockers, it  
19 wasn't as if the liquidators had no options. But by being  
20 deprived of the property, we had no options.

21 MR. KOOK: There's been no statement by the  
22 liquidator, or PPVA, or its counsel as to what in the blockers  
23 would have allowed them to sell the shares in this  
24 circumstance.

25 THE COURT: All right. Well, that would have to be --

1 that would have to be something that would go to trial. I  
2 mean, there is -- I mean, just to kind of preview it, there is  
3 no basis on which Dr. Goldberg can be awarded summary judgment  
4 on anything. None. None. The only question is to what extent  
5 PPVA is entitled to summary judgment. And it seems pretty  
6 clear to me that PPVA has the far better argument here, that  
7 what we have on the other side is a series of radically  
8 inconsistent and incredible statements and recreations of the  
9 history of what occurred with the culminating act being an  
10 exchange between Goldberg and Nordlicht, in which it's quite  
11 clear they made up an assignment, simply made it up.

12 So either I grant PPVA summary judgment or I set this  
13 for trial. If it goes to trial, Dr. Goldberg will need to come  
14 and testify.

15 MR. KOOK: We understand that, Your Honor.

16 THE COURT: If Dr. Goldberg needs to come and testify,  
17 there are more points than I can count on one hand that are  
18 extremely problematic for him, statements that he's made that,  
19 on their face, don't seem entirely truthful. He would have to  
20 testify to his dealings with Mr. Nordlicht. And I dare say  
21 that things would get complicated very quickly.

22 MR. KOOK: We are fully prepared to go forward, Your  
23 Honor.

24 THE COURT: Indeed, even if I were to grant summary  
25 judgment to the foreign representative, in my mind, there would

1 remain issues of fact as to what the damages amount would be.  
2 And I also believe that there would be open questions as to  
3 whether or not punitive damages would be assessed. I find the  
4 conduct here to be extremely troubling, extremely troubling.

5 And I think, Mr. Kook, that you should think hard  
6 about what I've just said.

7 MR. KOOK: I will, Your Honor. I certainly will, Your  
8 Honor.

9 And again, I understand where Your Honor is stating.  
10 Respectfully, we disagree with how Your Honor feels about the  
11 findings at this point, but --

12 THE COURT: Does --

13 MR. KOOK: -- and issues of credibility as to summary  
14 judgment. And we are ready to, if f Your Honor would order a  
15 trial, to prepare for one.

16 THE COURT: Where does Dr. Goldberg reside?

17 MR. KOOK: In Englewood, New Jersey.

18 THE COURT: All right. We've gone way over my fifteen  
19 minutes, and I need to now conclude the hearing because I have  
20 to turn to another matter. My chambers will contact you when  
21 I'm prepared to give you a decision and outline next steps.

22 I am curious as to whether or not there have been any  
23 discussions in the nature of settlement discussions between the  
24 parties.

25 MR. BURNS: There have not, Your Honor.

1 MR. KOOK: I will talk with Mr. Burns.

2 THE COURT: Is there any --

3 MR. BURNS: I'll correct -- I'm sorry, I'll correct  
4 that, Your Honor.

5 THE COURT: Yeah.

6 MR. BURNS: Before we filed the case, we did have --  
7 it's ancient history at this point, but I believe we did have  
8 some preliminary discussions with Mr. Kook before we commenced  
9 the case. And those discussions were not fruitful, given what  
10 happened after that.

11 THE COURT: Well, yeah. I mean, I don't want to hear  
12 what the substance of the discussions were. The reason that  
13 I'm asking is I am curious as to whether or not either of you  
14 thinks that you would benefit from spending time with one of my  
15 colleagues in the role as a mediator.

16 You clearly have given your client some advice. And I  
17 don't know if the things that I'm saying are going to resonate  
18 with you or with him. I think they should. I think that they  
19 warrant significant, careful consideration by your client --

20 MR. KOOK: I understand, Your Honor.

21 THE COURT: -- in my view. In my view, there's a lot  
22 of risk hanging around here. And I wonder if it would be  
23 beneficial. And also from the perspective of the foreign  
24 representative, given potential difficulties in collecting a  
25 judgment, particularly in light of the fact that the -- given

1 that the securities have declined in value, it's not a matter  
2 of there being simply a turnover, right?

3 But to the extent that there was -- I'll use the word  
4 conversion -- an inability of the foreign liquidators to access  
5 the securities during this period of time, et cetera, I just  
6 wonder what collectability would look like, were you ultimately  
7 to obtain a judgment against Dr. Goldberg. So I'm just  
8 wondering if you believe that you would benefit from sitting  
9 with one of my colleagues in the role of a mediator to settle  
10 this on a -- settle everything.

11 MR. KOOK: Yes, Your Honor.

12 MR. BURNS: Well, Your Honor, we don't -- yeah. We  
13 don't necessarily have concerns about collectability given Dr.  
14 Goldberg's situation. But we're, of course, always happy to  
15 talk settlement.

16 THE COURT: Would you be interested in spending time  
17 with one of my colleagues in a mediation?

18 MR. KOOK: I'd like to speak with my client and --

19 MR. BURNS: That would be --

20 MR. KOOK: -- and Mr. Burns, and get back to Your  
21 Honor.

22 MR. BURNS: That makes sense to me, Your Honor.

23 THE COURT: I could --

24 MR. BURNS: I think Mr. Kook and I could take a first  
25 pass at things and see if we get anywhere.

1 THE COURT: Okay. All right. Well, why don't you  
2 have those conversations, if you would. If you could get the  
3 transcript of the hearing today and send it to me?

4 And then, Mr. Burns, if I could ask you within, say, a  
5 week's time to contact Ms. Eisen in my chambers, and without  
6 identifying which one of you has come to what conclusion, just  
7 tell her that the parties are or are not interested in  
8 mediation. And that way, I won't know who has what view. But  
9 if you're interested in mediation, I'm quite sure I could get  
10 one of my wonderful colleagues to spend some time with you.  
11 And that might inform the path going forward.

12 MR. BURNS: Understood, will do.

13 MR. KOOK: Thank you, Your Honor.

14 THE COURT: All right. Stay safe, and we will talk to  
15 you next time.

16 Thank you very much.

17 MR. KOOK: Thank you.

18 MR. BURNS: Thanks very much, Your Honor.

19 (Conclusion of proceedings)  
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C E R T I F I C A T I O N

I, Ellen S. Kolman, certify that the foregoing transcript is a true and accurate record of the proceedings.



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Ellen S. Kolman (CET-568)  
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Date: December 13, 2021

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